

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DELFINO GARCIA GONZALEZ,

Plaintiff,

v.

**U.S. CITIZENSHIP AND
IMMIGRATION SERVICES; U.S.
DEPARTMENT OF HOMELAND
SECURITY,**

Defendants.

Civil Action No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

COMPLAINT

I. INTRODUCTION

1. Plaintiff Delfino Garcia Gonzalez (hereinafter “Plaintiff” or “Mr. Garcia”) brings this action under the Freedom of Information Act (hereinafter “FOIA”), 5 U.S.C. § 552. Mr. Garcia is currently detained by United States Immigration and Customs Enforcement (hereinafter “ICE”) and facing removal proceedings at the Varick Street Immigration Court in New York, NY.

2. Through a FOIA request submitted through counsel to Defendant United States Citizenship and Immigration Services (hereinafter USCIS), on February 13, 2019, Plaintiff sought a copy of records contained in his “A” file (hereinafter “FOIA Request”), which he believes are essential in preparing and mounting his defense from deportation. USCIS acknowledged receipt of the request and placed it on “Track III,” which is purported to signify expedited treatment for those with pending removal proceedings. Mr. Garcia has the added

urgency of being detained during his removal proceedings, which means that those proceedings occur expeditiously.

3. However, USCIS has violated the FOIA statute by failing to respond to Plaintiff's urgent request within the statutorily-prescribed time limit, failing to disclose the requested documents, and unlawfully withholding the requested information. Plaintiff now asks the Court to order USCIS to respond to the request immediately and to disclose all responsive records improperly withheld.

II. JURISDICTION & VENUE

4. This Court has jurisdiction over this action pursuant to FOIA, 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action as a federal question under 28 U.S.C. § 1331.

5. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.

6. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e). Venue is proper because Plaintiff is facing removal proceedings at the Immigration Court at 201 Varick Street in New York, NY, within the Southern District of New York. He is in the custody of the New York Field Office of ICE at the Orange County Jail, in Goshen, NY, also within the district. Further, his counsel, who submitted the FOIA Request on his behalf, has her principal place of business in this district. A substantial portion of the events giving rise to this action occurred in this district, and, upon information and belief, Defendants maintain records and information subject to the FOIA Request in this district.

III. PARTIES

7. Plaintiff Delfino Garcia Gonzalez, represented by counsel at The Bronx Defenders, is a detained respondent facing removal proceedings in New York, NY. He is detained at Orange

County Jail, 110 Wells Farm Road, Goshen, NY 10924. He is the requestor, as noted in the FOIA Request. *See* Exhibit A at 1 (“Our office is assisting Mr. Garcia Gonzalez with his request for his entire alien file.”)

8. Defendant United States Department of Homeland Security (hereinafter “DHS”) is a federal agency within the meaning of 5 U.S.C. § 552(f). DHS is the federal department responsible for enforcing federal immigration law, and that oversees the component agency from which the Plaintiff seeks records. DHS has possession of, and control over, the information Plaintiff seeks through the FOIA Request. DHS is headquartered at 245 Murray Lane, SW, Washington, D.C. 20528, and in New York at Jacob Javits Federal Building, 26 Federal Plaza, New York, NY 10278.

9. Defendant United States Citizenship and Immigration Services is a federal agency within DHS that oversees lawful immigration to the United States and adjudicates immigration benefits. USCIS has possession of, and control over, the information Plaintiff seeks through the FOIA Request. USCIS is headquartered at 20 Massachusetts Avenue, NW, Washington, D.C. 20008, and in New York at Jacob Javits Federal Building, 26 Federal Plaza, 7th Floor, Room 700, New York, NY 10278.

IV. STATUTORY BACKGROUND

10. The Freedom of Information Act, 5 U.S.C. § 552 (FOIA), requires all federal agencies to search for and disclose government records which are requested by a member of the public, subject to certain narrow exceptions. 5 U.S.C. § 552(a)(3)(A), (C); 5 U.S.C. § 552(b)(1)-(9).

11. Federal agencies must respond to FOIA requests within twenty business days after receipt, although the deadline may be extended an additional ten working days “[i]n certain circumstances.” 5 U.S.C. § 552(a)(6)(B)(i).

12. The agency's written response must state whether it will comply with the FOIA request, indicate the reasons for that determination, and provide information regarding the process by which a requester may appeal an agency's adverse determination. 5 U.S.C. § 552(a)(6)(A)(i).

13. All administrative remedies are deemed exhausted due to an agency's failure to comply with statutory time limits. 5 U.S.C. § 552(a)(6)(C)(i).

14. Upon an agency's failure to meet its obligations, a district court may order the production of those records responsive to the FOIA request. 5 U.S.C. § 552(a)(4)(B).

V. FACTUAL BACKGROUND

15. Plaintiff Mr. Garcia was detained by ICE on October 1, 2018 and placed into removal proceedings at the Varick Street Immigration Court in New York, NY. On information and belief, he appeared before an Immigration Judge *pro se* on several occasions before he had the opportunity to access pro bono counsel through the New York Immigrant Family Unity Project.

16. Once represented by counsel, counsel requested additional time to prepare applications for relief from removal and for trial, but the Immigration Judge instead required all applications to be submitted within just two weeks, and set a trial date on the merits of the applications for February 27, 2019. *See* Exhibit A at 7.

17. On February 13, 2019, Plaintiff through counsel submitted FOIA requests to both USCIS and ICE on February 13, 2019 in an effort to collect information essential to his defense. The request to USCIS consisted of an email with the following attachments: Form G-639 (USCIS FOIA request form); G-28 (appearance of counsel); and hearing notice from immigration court demonstrating basis for expedited treatment. *See* Exhibit A.

18. Mr. Garcia requested his complete "alien" or "A" file, which he believes contains documents of significance for his removal case. On information and belief, Defendants maintain

an “A” or alien file for those individuals who have made applications before DHS or had other interactions with the agency. Specifically, the request was for “any and all information related to immigration court proceedings, or any contacts with USCIS.” *See* Exhibit A at 4.

19. By letter dated February 26, 2019, USCIS acknowledged receipt of the request on February 26, 2019, though that was in fact 13 days after the request was submitted to the agency by email. *See* Exhibit B. The request was assigned a control number, NCR2019025567, and placed on Track III per Plaintiff’s request.¹ *See* Exhibit B.

20. Despite the routine nature of the request, in the letter, USCIS claimed “unusual circumstances” necessitate a 10-day extension of the deadline under 5 U.S.C. § 552(a)(6)(B).

21. FOIA requires that an agency timely disclose all records responsive to a FOIA request unless the items sought are enumerated in one of nine narrowly construed statutory exemptions. 5 U.S.C. § 552(a)(30)(A); 5 U.S.C. § 552(b)(1)-(9). FOIA’s deadlines require Defendants to determine within 20 days (exception Saturdays, Sundays, and legal public holidays) after the receipt of a request whether to comply with such a request and “shall immediately notify the person making such request of such determination and the reasons therefor.” 5 U.S.C. § 552(a)(6)(A)(i).

22. The statutory deadline by which USCIS should have responded to the FOIA Request with responsive documents was March 14, 2019. USCIS invoked a 10-day extension, though it did not demonstrate “unusual circumstances” in accordance with the statute to justify the extension. But in any event, the extended deadline of March 28, 2019 also passed without response.

23. To date, USCIS has not provided substantive information about the request following the initial acknowledgment letter, or answered the request with responsive documents.

¹ Subsequent communications from the agency indicated that a duplicate request was placed on the slower Track II, but after follow up from counsel, the agency stated that duplicate was removed and confirmed that the principal request was still on Track III.

24. On March 13, 2019, ICE provided a response to the separate FOIA request directed to ICE in accordance with the timeline prescribed by statute. Mr. Garcia through counsel has appealed the agency determination as insufficient.

25. In Immigration Court, Mr. Garcia previously requested continuances of his trial date, but those motions were denied, and his hearing began on February 27, 2019. The next court date on the merits of his applications for relief is June 19, 2019. In the meantime, Mr. Garcia remains detained.

26. In an effort to secure the documents needed for his defense, Mr. Garcia also made a motion to subpoena his “A” file, which was denied by the Immigration Judge.

VI. EXHAUSTION

27. A requester is deemed to have exhausted all available administrative remedies as a matter of law where an agency fails to comply with FOIA’s statutory time limits. 5 U.S.C. § 552(a)(6)(C)(i). Thereafter, a district court has jurisdiction to enjoin the agency from withholding records and to order production of records that are subject to disclosure under FOIA. 5 U.S.C. § 552(a)(4)(B).

28. Defendants have failed to produce records or a substantive response to the request by the deadline established by the FOIA statute. As a result of Defendants’ failure to comply with their FOIA obligations, Plaintiff has exhausted his administrative remedies with respect to the FOIA Request.

VII. CAUSES OF ACTION

COUNT I VIOLATION OF THE FREEDOM OF INFORMATION ACT 5 U.S.C. 552(a)

29. Plaintiff incorporates by reference the allegations contained in the foregoing paragraphs as if each such allegation was set forth herein in its entirety.

30. Defendants have violated 5 U.S.C. § 552(a)(3)(A) by failing to promptly release agency records in response to the FOIA Request.

31. Defendants have violated 5 U.S.C. § 552(a)(3)(C)-(D) by failing to make reasonable efforts to search for records responsive to the FOIA Request.

32. Defendants have violated 5 U.S.C. § 552(a)(6)(A)(i) by failing to make a determination regarding the FOIA Request within the governing statutory time limit.

33. Defendants have violated 5 U.S.C. § 522(a)(3)(B)-(D) by failing to conduct an adequate search of records responsive to the FOIA Request.

34. Injunctive relief is authorized under 5 U.S.C. § 552(a)(4)(B) because Defendants continue to improperly withhold agency records in violation of FOIA. Plaintiff will suffer irreparable injury from, and have no adequate remedy for, Defendants' illegal withholding of documents subject to his FOIA Request.

35. Declaratory relief is authorized under 22 U.S.C. § 2201 because an actual and justiciable controversy exists regarding Defendants' improper withholding of agency records in violation of FOIA.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

- (a) For a judicial declaration confirming that Defendants' failure to disclose the records requested by Plaintiff is unlawful;
- (b) For injunctive relief ordering Defendants to immediately and expeditiously (i) produce to Plaintiff all non-exempt responsive documents covered by the FOIA Request, and (ii) submit a detailed descriptive index justifying withholding of any responsive documents;
- (c) For Plaintiff's reasonable attorney's fees and litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (d) For such other relief as the Court deems justice and proper.

Respectfully submitted this 2nd day of April, 2019.

_____/s
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Counsel for Plaintiff

Exhibits

- A. Plaintiff's FOIA Request;**
- B. USCIS confirmation letter.**